

(b) If Cellexis is unable to comply with the network changes proposed pursuant to subsection (a) above, within the thirty (30) day notice period, the Parties agree to consult in good faith for the purpose of devising alternative solutions, provided, however, that if reasonable alternative solutions acceptable to BANM, are not identified and implemented within a subsequent sixty (60) day period, the Trial shall terminate at that time.

(c) BANM shall operate and maintain the BANM network. BANM shall provide Cellexis with immediate notice of any issue coming to its knowledge affecting the Cellexis System or Facilities and relating to the BANM network. To the extent that the issue requires remedial action by BANM, BANM shall diligently commence remedial efforts to resolve the issue within twenty-four (24) hours.

(d) BANM will provide additional ports, at the charges set forth on Exhibit A, to Cellexis in a timely manner as may be necessary to enable Cellexis to meet its obligations pursuant to Section 6(f).

(e) BANM shall provide technical and operational support that may be requested by Cellexis during the Trial to assist Cellexis in maintaining interoperability and connectivity between the BANM network and the System; provided that for any technical and operational support, or other network services, requested by Cellexis Cellexis shall pay BANM: \$100 per hour for any services performed between 8:00 am and 5:00 pm, Monday through Friday, and \$150 per hour for any services performed between 5:01 pm and 7:59 am or for any services performed on Saturday, Sunday or on a holiday.

(f) BANM shall provide a detailed magnetic billing tape of all Cellexis call detail in one (1) minute increments within ten (10) business days after the end of the billing cycle applicable to Cellexis's account.

(g) BANM shall activate numbers in Cellexis account within six (6) hours of BANM's receipt of Cellexis's written activation request. All activated numbers shall be roamer restricted by BANM at the charge set forth on Exhibit A.

(h) BANM will intercept 911 calls dialed by Authorized Users and will not route such 911 calls to the System at the charge set forth in Exhibit A.

(i) BANM shall provide cellular radio service (CRS) to Cellexis for use by Cellexis and its Authorized Users under the terms and conditions set forth in Exhibit B which shall be incorporated herein and made a part hereof.

(j) BANM shall maintain a Home Location Register database entry in BANM's network for each Authorized User of the Service.

(k) BANM shall provide Cellexis with one (1) demonstration number for each one thousand (1,000) numbers activated by Cellexis in the Market. Such demonstration numbers may be used for unlimited local airtime at no charge to Cellexis. Cellexis shall pay BANM for all roamer, long distance and landline charges associated with such demonstration numbers. Cellexis shall also pay BANM for any taxes and surcharges associated with such demonstration numbers.

#### **8. FRAUD.**

Cellexis shall be responsible for all fraud, incurred in any way, including any calls that may bypass the Cellexis System, on all demonstration numbers and on all numbers provided by BANM to Cellexis that have been roamer restricted pursuant to Section 7(g) on numbers provided by BANM to Cellexis and claims of fraud shall not allow Cellexis to deduct any amounts from charges owed to BANM. Cellexis understands and agrees that should a roaming call occur on numbers provided by BANM to Cellexis despite implementation of roamer restriction that Cellexis must pay BANM for all roaming charges thereby incurred.

To assist Cellexis in minimizing claims of fraud, BANM agrees to offer remote access to the FraudTec system to give Cellexis real-time access to fraud alarms. In addition, Cellexis will have access to all fraud prevention measures that may become available under terms and conditions agreed upon by both Parties. Cellexis shall provide, at its sole cost, the equipment (hardware and software) and all telephone facilities needed for FraudTec or other fraud prevention measures that may become available.

#### **9. LAWS.**

If, at any time, BANM, in its sole discretion, determines that its continued participation in this Agreement may expose it to being found in non-compliance with any law or court decree, BANM shall be entitled to terminate this Agreement immediately.

#### **10. WARRANTIES.**

(a) Cellexis represents and warrants:

(I) the Service and the System is free of any rightful claims of infringement of any third party; and

(II) it has all rights, title, ownership, interest and/or marketing rights, including, but not limited to, patents, copyrights and/or trademarks, necessary to use the System and to provide Service as provided for in this Agreement.

(b) BANM represents and warrants:

(i) the BANM network is free of any rightful claims of infringement of any third party; and

(ii) It has all rights, title, ownership, interest and/or marketing rights, including, but not limited to, patents, copyrights and/or trademarks, necessary to use the BANM network as provided for in this Agreement.

**11. LIMITATION OF LIABILITY.**

(a) EXCEPT AS OTHERWISE STATED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.

(b) BANM MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, CONCERNING THE FACILITIES OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

**12. PUBLICITY/ADVERTISING.**

Cellexis shall not use BANM's name or marks in any advertising, sales promotion, press releases or other publicity matters relating to the Trial, the Service or the System nor shall Cellexis use any language from which BANM's names or marks may be inferred or implied. Each Party shall obtain the other Party's written approval before any information relating to this Agreement is released to anyone.

**13. TRADEMARK.**

Each Party acknowledges the goodwill associated with the other's trademarks. Neither Party shall use any trademarks of the other without the other's prior written consent.

**14. COMPLIANCE WITH LAWS.**

Both Parties shall comply with all applicable laws in the performance of this Agreement.

**15. CONFIDENTIAL INFORMATION.**

(a) Cellexis shall hold in strictest confidence information which is confidential and/or proprietary to BANM ("Confidential Information", as more fully described below). Cellexis shall not disclose or make Confidential Information available, in any form, to

any third party or use Confidential Information for any purpose other than as specified in this Agreement. Cellexis shall take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents (who have access to same because of and only on a need-to-know basis) in violation of any provision of this Agreement, but in no event less than reasonable means.

(b) BANM's Confidential Information shall include, but not be limited to, all information, regardless of form, relating to this Trial, cellular network usage, interconnection or interface arrangements, pseudo-MINs, and rates, and all information clearly marked as confidential.

(c) The foregoing shall not prevent Cellexis from disclosing Confidential Information which: (i) is or becomes a part of the public domain through no act or omission of Cellexis; (ii) was in Cellexis's lawful possession prior to such access to or the disclosure of same and had not been obtained by Cellexis either directly or indirectly from BANM, all of which is so documented by Cellexis; (iii) is lawfully disclosed to Cellexis by a third party without restriction on such disclosure; (iv) is required to be disclosed pursuant to subpoena or other legal process, provided, however, that Cellexis first provides written notice to BANM of the request; (v) is approved by BANM for disclosure; or (vi) with respect to information that is the same as or substantially identical to the Confidential Information, is independently developed and is so documented by Cellexis.

(d) Cellexis acknowledges that BANM would suffer irreparable damage in the event of any material breach of the provisions of this Section 15. Accordingly, in such event, BANM would be entitled to obtain preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity against Cellexis's breach or threatened breach of this Section 15.

## **16. INDEMNIFICATION**

(a) Each of BANM and Cellexis (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other (the "Indemnified Party"), its employees and agents, its affiliates and its successors and assigns from and against all losses, damages, and liability (including all claims, actions, suits, fines, interest, penalties, costs and expenses) including reasonable attorney's fees incurred on account thereof, incident, relative to or arising from (i) any misrepresentation or breach of covenant, representation or warranty of the Indemnifying Party contained herein, and (ii) any injury to any Indemnifying Party employee or agent, including death to persons, or damage to property, including theft, resulting from the acts or omissions of the Indemnifying Party, its employees or agents whether negligent or otherwise, and (iii) any injury to any person, (including death) or damage to property, (including theft) resulting from the acts or omissions of the Indemnifying Party, its employees or agents, whether negligent or otherwise.

(b) The Indemnified Party hereunder shall notify the Indemnifying Party within ten (10) days of any written claims or demands against it for which the Indemnifying Party is responsible hereunder.

**17. INFRINGEMENT INDEMNITY.**

The following provisions shall apply to any infringement, or claim of infringement, of any patent, trademark, copyright, trade secret or other proprietary interest ("IP Claim"). Should the Service or the System that is the subject of the Trial with BANM hereunder become the subject of an IP Claim, BANM may terminate the Trial. Cellexis shall defend or settle, at Cellexis's own expense, any IP Claim regarding the Service or the System and Cellexis shall indemnify and hold harmless BANM in the event of any such IP Claim. BANM shall notify Cellexis promptly of any IP Claim regarding the Service or the System for which Cellexis is responsible hereunder. Should the BANM network become the subject of an IP Claim, Cellexis may terminate the Trial. BANM shall defend or settle, at BANM's own expense, any IP Claim regarding the BANM network and BANM shall indemnify and hold harmless Cellexis in the event of any such IP Claim. Cellexis shall notify BANM promptly of any IP Claim regarding the BANM network for which BANM is responsible hereunder.

BANM will agree not to terminate the Trial in the event of an IP Claim if prior to entering this Agreement Cellexis has purchased Professional Liability Insurance coverage with limits of \$5 Million per occurrence and \$10 Million in the aggregate and if the coverage includes patent infringement and copyright infringement. The insurance policy must be maintained for the term of this Agreement and placed with an insurance company having a Best Rating of (AX) or better and BANM must have been added as an additional insured. BANM must receive prior notice of cancellation or material change to the policy. Cellexis will provide BANM with a certificate of insurance evidencing the above coverage.

**18. TERMINATION/DEFAULT.**

(a) The Trial shall have a fixed term of one year from February 20, 1996 to February 19, 1997 ("Term"), unless sooner terminated under a provision of this Agreement. On expiration of the Term the Trial will automatically terminate. Neither Party shall be under any obligation to renew the Trial Agreement, and each Party at its discretion may decide not to renew for any, or no reason, provided that BANM will give Cellexis at least ninety (90) days written notice of a decision not to renew.

(b) This Agreement may be terminated by Cellexis on thirty (30) days' written notice to BANM subject to the payment of accrued charges and termination charges. In addition, Cellexis may terminate this Agreement, subject to payment of accrued charges but without liability for termination charges, if BANM fails to perform or observe any term or condition of this Agreement and such failure shall continue unremedied for thirty (30) days after BANM's receipt of written notice thereof from Cellexis.

(c) BANM may terminate this Agreement or any service orders or unfilled purchase orders accepted hereunder, immediately upon notice by BANM if Cellexis is disconnected for cause as specified in Exhibit B to this Agreement; or Cellexis fails to pay any charge in full when due; or a proceeding in bankruptcy, reorganization, insolvency, receivership or assignment for the benefit of creditors is instituted by or against Cellexis. BANM may also terminate this Agreement or any service orders or unfilled purchase orders accepted hereunder if Cellexis fails to perform or observe any term or condition of this Agreement and such failure continues unremedied for thirty (30) days after Cellexis' receipt of written notice thereof from BANM. Also BANM may, without incurring any liability to Cellexis or its Authorized Users, either temporarily discontinue furnishing service to Cellexis or terminate the contract. Cellexis shall indemnify and hold harmless BANM from any liability to Authorized Users arising from Cellexis' default and from a termination or discontinuance of service. Upon termination by BANM, termination charges will apply as set forth in this Agreement.

(d) At the time this Agreement is terminated for any reason, Cellexis and BANM agree to facilitate the provision of CRS to Authorized Users. In the event that BANM does not get sufficient information from Cellexis so that BANM can continue to provide service to Authorized Users, within ten (10) days from the date of termination, BANM will route all Authorized User calls directly to BANM personnel and the Authorized Users will be informed that they may continue service with BANM.

(e) Upon termination of this Agreement, Cellexis shall return all Confidential Information to BANM.

## **19. INDEPENDENT CONTRACTOR**

Each of the Parties to this Agreement shall perform its obligations hereunder as an independent contractor and nothing herein shall be construed to create any relationship among the Parties other than one among independent contractors. Each Party shall be solely responsible for the safety and supervision of its employees as well as for the withholding or payment of all Federal, State and local Personal Income Taxes, Social Security, Unemployment and Sickness Disability Insurance and other payroll taxes with respect to its employees, including contribution from them, when and as required by law.

## **20. NOTICE**

All notices, requests, demands and other communications required under or delivered pursuant to this Agreement shall be in writing and shall be deemed to have been duly given (a) if personally delivered, upon delivery, or (b) if mailed, when mailed by United States first-class, certified, registered or express mail or other overnight service, postage prepaid, addressed to:

If to Cellexis:

**Cellexis International, Inc.  
4615 South Ash Avenue, Suite H-5  
Tempe, Arizona 85282**

**Attention: Douglas V. Fougles**

**Facsimile Number (602) 664-1056**

**with a copy to:**

**Jennings, Strouss & Salmon, P.L.C.  
Two North Central Avenue, Suite 1800  
Phoenix, Arizona 85004**

**Attention: I. Douglas Dunipace**

**Facsimile Number (602) 253-3255**

**with a copy to:**

**London & Mead  
1225 19th Street NW  
Washington, DC 20036**

**Attention: Mark London**

**Facsimile Number (202) 785-4280**

**If to SANM:**

**Bell Atlantic NYNEX Mobile  
180 Washington Valley Road  
Bedminster, NJ 07921**

**Attention: Richard J. Lynch**

**with a copy to:**

**Bell Atlantic NYNEX Mobile  
180 Washington Valley Road  
Bedminster, NJ 07921**

**Attention: General Counsel**

If either Party changes its address during the term of this Agreement, it shall so advise the other Party in writing and any notice thereafter required to be given shall be sent to such new address.

21. **WAIVER.**

No failure of any Party to enforce a provision of this Agreement will be construed as a general or a specific waiver of that provision, a Party's right to enforce that provision, or a Party's right to enforce any other provision of this Agreement.

22. **HEADINGS.**

The headings are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

23. **SEVERABILITY.**

In the event that any one or more of the provisions, or any portion thereof contained herein, is for any reason held invalid, unenforceable or void in any respect under the applicable laws of the jurisdiction governing the entire Agreement, to that extent which it is not inconsistent, vague or unintelligible as the result of the severed portion, this Agreement shall remain in full force and effect and this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

24. **FORCE MAJEURE.**

If the performance of this Agreement, or any obligation thereunder, is interfered with by reason of any circumstances beyond the reasonable control of the Party affected, including, without limitation, fire, lightning, explosion or other casualty, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body, or labor unrest including without limitation, strikes, slowdowns, picketing or boycotts ("Force Majeure"); then the Party affected shall be excused from such performance on a day-to-day basis.

25. **GENERAL PROVISIONS.**

(a) **ASSIGNMENT**

Any assignment of this Agreement, in whole or in part, or any other interest hereunder without BANM's written consent shall be void. It is agreed that BANM upon five (5) days prior written notice to Cellexis, may assign all of its rights, duties and obligations under this Agreement to an affiliate or affiliates of BANM or to a partnership or partnerships in which BANM or its affiliate has an interest. Cellexis may license one (1) Cellexis affiliate



to operate the System in the Market if such Licensee is acceptable to BANM and if such Licensee is managed by Celixis and agrees to bound by the terms and conditions of this Agreement and if Celixis does not thereby relinquish any of its obligations under this Agreement and such license shall not constitute an assignment hereunder. BANM shall impose a one-time One Dollar (\$1.00) per account number transfer charge if it consents to Celixis's assignment of this Agreement to another.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of New Jersey, without reference to its conflict of laws provisions.

(c) Survival. The provisions of Sections 10, 11, 12, 15, 16 and 17 shall survive the termination of this Agreement.

(d) Amendments in Writing. This Agreement may not be amended, modified, or supplemented unless in writing and executed by a duly authorized representative of each Party to this Agreement.

(e) Ownership of Information. Except for the functionality existing within the Celixis System on the date of this Agreement, ownership of, and all right, title, and interest, including copyright and other proprietary rights, in the ideas, material, concepts, plans, creative works, data, programming code and other knowledge authored, originated or developed as part of the Trial covered by this Agreement is and shall be transferred to and vested in BANM, including but not limited to all interconnection and interface and other network arrangements.

The term "functionality existing within the Celixis System" shall specifically exclude all interconnection, interface and other network arrangements existing on, or before the date of this Agreement.

(f) Entire Agreement. The Wholesale Service Agreements between Celixis and Bell Atlantic Mobile Systems of Washington, Inc. and Bell Atlantic Mobile Systems of Baltimore, Inc. dated November 27, 1995 are hereby terminated in their entirety. This Agreement and the exhibit(s) attached hereto and made a part hereof, including, but not limited to, the Settlement Agreement, constitute the complete and entire agreement of the Parties and supersede all previous communications, oral and written, between them relating to the subject matter hereof.

The Parties further agree that this Agreement shall be binding upon their respective successors and permitted assignees. No representations or statements of any kind by either Party, which are not expressly stated herein, shall be binding on such Party.

(g) Discretion. Whenever a Party is authorized herein to exercise discretion, such discretion shall be exercised in good faith and consistent with sound business practices.

IN WITNESS WHEREOF, the Parties' duly authorized representatives have executed this Agreement as of the date set forth above.

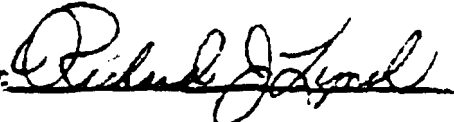
Cellco International, Inc.

By: 

Name: Douglas V. Fougner  
Title: President & Chief Executive Officer

Date: 5-17-96

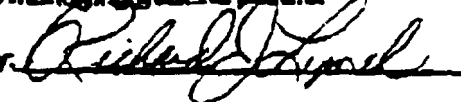
WASHINGTON DC SMSA  
Limited Partnership  
by Cellco Partnership, its  
managing general partner  
by Bell Atlantic NYNEX Mobile, Inc.,  
its managing general partner

By: 

Name: RICHARD J. LYNCH  
Title: Executive Vice President &  
Chief Technical Officer

Date: 5/20/96

CELLCO PARTNERSHIP  
by Bell Atlantic NYNEX Mobile, Inc.,  
its managing general partner

By: 

Name: RICHARD J. LYNCH

Title: Executive Vice President & Chief  
Technical Officer

Date: 5/20/96

## **EXHIBIT A**

<b>Access</b>	<b>\$9.00/Access Number/Month</b>
<b>Peak</b>	<b>\$0.285/minute</b>
<b>Off-peak</b>	<b>\$0.12/minute</b>

<b>Activation Charge</b>	<b>\$20.00/Access Number</b>
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In any given month an 8% usage discount will be applied to monthly charges for any access number that uses 600 min. or more in such month.

<b>Features</b>	<b><u>Per Access Number Charge Per Month</u></b>	<b><u>Per Access Number Activation Charge*</u></b>
Incoming Restriction	\$1.50	\$5.00
Outgoing Restriction	\$1.50	\$5.00
Roamer Restriction	\$1.50	\$5.00

**Emergency Call Routing - Network set-up fee = \$1,000.00 (one time charge)**

<b>Port Charges</b>	<b>\$600.00/port/month</b>
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If Cellexis's total usage through all ports exceeds 14,999 minutes in any month, an additional charge of \$0.035 per minute of use shall apply in such month.

<b>Port Installation Fee</b>	<b>\$1200.00/port (one time charge)</b>
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Cellexis understands that if different or additional features are required to satisfy any BANM redesigned network configuration, this exhibit will be amended to include such features and the associated charges for such features.

\*Not applicable when feature is activated at same time as access number.

## **EXHIBIT B**

### **TERMS AND CONDITIONS FOR THE PROVISION OF CELLULAR RADIO SERVICE**

These Terms and Conditions for Cellular Radio Service (hereinafter "CRS") shall become effective upon activation of any Access number furnished by BANM to Cellexis under this Agreement.

#### **1. DEFINITIONS**

**Access Number** - A telephone number provided to Cellexis by BANM and associated with Cellexis's or its Authorized User's Cellular Radio Telephone Equipment, enabling use of the Cellular System.

**Airtime Usage** - A period of time, measured in minutes, which Cellexis or its Authorized User uses the Cellular System.

**Authorized User** - A person, firm, corporation or other legal entity that is authorized by Cellexis to use the CRS purchased by Cellexis from BANM.

**Cellular Geographic Service Area (CGSA)** - A geographical area authorized by the Federal Communications Commission to be served by a Cellular System.

**Cellular Radio Service (CRS)** - A service which utilizes cellular radio technology to provide telecommunications between Cellular Radio Telephone Equipment and a landline telephone station or directly between Cellular Radio Telephone Equipment.

**Cellular System** - A telecommunications system which provides CRS.

**Emergency Service Routing** - A service which routes calls dialed to 911 to an emergency service provider designated by BANM.

**Incoming Restriction** - A service in which the Cellular System receives incoming calls only from one destination.

**Outgoing Restriction** - Allows a user to limit outgoing calls from the Cellular Radio Telephone Equipment to be completed only to one destination, regardless of the number dialed.

**Mobile Radio Unit/Cellular Radio Telephone Equipment** - The Customer's radio telephone equipment that is technically and operationally compatible with the Cellular System.

**Mobile Service Area** - The FCC authorized area served by a Cellular System. It may include one or more Cellular Geographic Serving Areas.

**Off - Peak Usage Period** - 9 PM to 6:59 AM Monday through Friday and all day on Saturday and Sunday. The off-peak period rates apply to the peak period for the holidays specified below.

New Years Day (January 1)  
Memorial Day  
Independence Day (July 4)  
Labor Day  
Thanksgiving  
Christmas (December 25)

**Peak Usage Period** - 7 AM to 8:59 PM Monday through Friday.

**Roamer Restriction** - Allows a user to restrict both outgoing and incoming calls only to those calls placed or received while the Cellular Radio Telephone Equipment is physically within a designated Mobile Service Area.

**Roamer Service** - CRS provided outside of the home Mobile Service Area.

## **2. GENERAL TERMS**

A. The CRS is available to cellular equipment equipped for CRS when those units are within range of sites located in the CRS Mobile Service Area.

B. CRS is subject to transmission limitations caused by atmospheric, topographic and like conditions.

C. CRS may be temporarily refused or limited because of the cellular system's capacity limitations.

D. CRS to Cellexis or to any or all Authorized Users, may be interrupted, curtailed, or modified because of suspected fraudulent or illegal activities by Cellexis, an Authorized User, or by any third party or because of equipment modifications, upgrades, relocations, repairs and similar activities necessary for the proper or improved operation of CRS.

E. Cellexis is responsible for payment of all CRS charges, taxes, landline charges, cellular long distance charges and toll charges recorded to a Cellexis access number for each use of the BANM cellular system or any other carrier's cellular system, whether incoming to or outgoing from an access number.

F. Cellexis acknowledges that CRS is capable of being intercepted without knowledge or permission of the user by third parties possessing certain types of devices or equipment.

G. BANM may terminate all CRS provided hereunder without notice if Cellexis has made a false statement to BANM or if BANM is unable to verify to BANM's satisfaction that the credit information that Cellexis provided to BANM is accurate for purposes of inducing BANM to extend credit to Cellexis. BANM may terminate CRS to individual Authorized Users if BANM believes that the CRS is being misused, or is being used for criminal or unauthorized activities.

H. CRS is furnished for use by Cellexis or Authorized Users subject to applicable state and/or federal regulation.

I. Cellexis shall not assign an access number to more than one piece of Cellular Radio Telephone Equipment at a time.

J. Orders, including those which involve the activation, change, or the discontinuance of service to Cellexis or Authorized Users, will be accepted by BANM only from Cellexis.

### **3. ABUSE AND FRAUDULENT USE**

A. CRS shall not be used to make foul or profane expressions, to impersonate another person with fraudulent or malicious intent, to call another person so frequently or at such times of day or in any other manner so as to annoy, abuse, threaten, or harass such other person, or for any unlawful purpose.

B. CRS shall not be used in such a manner as to interfere unreasonably with the use of the service by one or more other customers.

C. Cellexis shall take reasonable steps to notify its Authorized Users of the foregoing restrictions. If Cellexis identifies any violation by any Authorized User, it shall promptly take appropriate action to cause the Authorized User to discontinue such violations including, if necessary, the termination of Service to such Authorized User.

### **4. INTERRUPTIONS OF CRS SERVICE**

A. No credit or adjustment will be made for interruptions of CRS, unless the interruption continues for a period of 24 hours, as measured from the time the interruption is reported to BANM by Cellexis.

B. In the event of an interruption of CRS that exceeds the minimum requirements in 4A. above, a credit allowance will be made, at Cellexis's request, for a

prorata adjustment of all monthly access charges billed by BANM for services rendered inoperative by the interruption.

C. The credit allowance will be computed by dividing the duration of the service interruption (measured in 24 hour days from the time the interruption is reported to BANM, by a standard 30 day month, and then multiplying the result by BANM's fixed monthly charges for each interrupted access number. A period of time less than 24 hours shall not be credited and an additional period of 12 hours or more shall be considered an additional day. In no case shall the credit exceed the monthly access charges. No other liability shall attach to BANM in consideration of such interruption to service.

D. A credit allowance will not be given for interruptions caused by the negligence or willful act of Cellexis or any Authorized User or interruptions caused by failure of equipment or service not provided by BANM, or interruptions initiated by BANM for cause, or due to non-payment, or breach of this Agreement or for reasons set forth in Section 2, paragraph G of this Exhibit B.

E. Any request for credit under the terms of this Agreement, either for interruption of CRS or erroneous billing to Cellexis by BANM, must be made in writing within 60 days of the occurrence.

## **5. LIABILITY**

The CRS service furnished by BANM, in addition to the limitations set forth elsewhere in these Terms and Conditions and in Section 11 of the Trial Agreement, also is subject to the following limitation:

A. The liability of BANM for damages 1) arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission, or failures or defects in facilities furnished by BANM, 2) occurring in the course of furnishing CRS and not caused by the negligence of Cellexis or Authorized User, or 3) of BANM in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall in no event exceed an amount equivalent to the proportionate access charge to Cellexis for the period of the service during which such mistake, omission, interruption, delay or error or defect in transmission, or failure or defect in facilities occurs.

B. Cellexis or Authorized User shall have no rights to consequential, special, incidental or indirect damages for reason of such mistakes, omissions, interruption, delay, error, failure or defect in transmission, or failure or defect in facilities.

C. Cellexis or Authorized User indemnifies and saves BANM harmless for libel, slander, or infringement of copyright from the material transmitted over its facilities.  
BANM.

D. BANM is not liable for damages for any accident or injury occasioned by the use of Cellular Radio Telephone Equipment.

E. BANM is not liable for any defacement or damage to Cellexis's or Authorized User's vehicle resulting from the installation and existence of Cellular Radio Telephone Equipment.

F. BANM shall not be liable to Cellexis or to any Authorized Users if changes in any of BANM's facilities, operations, equipment, procedures, or services: (1) render obsolete any equipment or software provided by Cellexis or any Authorized User in conjunction with its use of CRS (2) require modification or alteration of such equipment or software; or (3) otherwise affect its performance. BANM agrees to give a thirty (30) day advance notice to Cellexis of changes which may be reasonably anticipated to result in the conditions described in (1) and (2).  
notice.

G. BANM shall not be liable to Cellexis, to any Authorized User or to any other persons for interception of any service provided under this agreement, including, without limitation, voice privacy service.

H. BANM is not liable for any defects of the Facilities used during the Trial or in the provision of CRS not provided by BANM.

## 6. TIMING OF CALLS

A. CELLEXIS is charged for airtime usage when calls are originated and when calls are received by Cellexis's System and/or its, or Authorized User's, Cellular Radio Telephone Equipment (hereinafter "Chargeable time"). Chargeable time includes all call set-up and tear-down time.

1. Chargeable time for calls originated by a Cellular Radio Telephone Equipment begins when a connection is established to BANM'S Cellular System, and ends when the Cellular System disconnects.

2. Chargeable time for calls received by a Cellular Radio Telephone Equipment begins when the call is answered and ends when the Cellular System disconnects.

B. Chargeable time will be rounded-up to the next full minute. BANM represents that it currently rounds-up to the next full minute on invoices rendered to all reseller customers in the Market.



C. When a connection is established in one rate period and ends in another, the rate in effect for each period applies to the portion of the connection occurring within each rate period.

## **7. DEPOSITS & ADVANCE PAYMENT**

A. BANM has, in order to safeguard its interests, required Cellexis to pledge a one hundred fifty thousand dollar (\$150,000) certificate of deposit to be held by BANM as a guarantee of the payment of charges. Said security may be applied at any time, at the option of BANM, in payment of any unpaid charges for service rendered to CELLEXIS or in payment of applicable termination charges. Cellexis further agrees that this certificate of deposit will constitute adequate security for up to 5000 access numbers in the Market. Cellexis shall deliver additional security deposits of \$5000 for each additional 500 access numbers, over and above the first 5000 access numbers in the Market. For example, if Cellexis orders an aggregate total of 6000 access numbers it would be required to deliver to BANM two additional security deposits of \$5000 for a total of \$10,000 in security above the \$150,000 security deposit.

B. BANM may also require additional deposits upon review of the financial statements provided pursuant to paragraph 6(g) of the Trial Agreement or if Cellexis becomes past due. BANM shall hold such additional deposits as guarantee of the payment of charges. At such time as the contract is terminated, BANM shall release its security interest in the certificate of deposit and the amount of any additional deposit will be credited to CELLEXIS'S account and any credit balance which may remain will be refunded, provided that there is no further relationship between Cellexis and BANM in any BANM markets or markets of its affiliates.

C. The fact that a certificate of deposit or an additional deposit has been made or pledged neither relieves CELLEXIS from complying with BANM regulations on the timely payment of bills on presentation nor constitutes a waiver or modification of the regulations of BANM providing for the discontinuance of service for nonpayment of any sums due BANM for service rendered.

## **8. RATES FOR FRACTIONAL PERIODS**

The charges for a fractional part of a month will be a proportionate part of the monthly recurring charge based on the actual number of days the service is provided. For the purpose of administering this regulation, every month is considered to have 30 days.

## **9. ADJUSTMENTS FOR TAXES, FEES, ETC.**

A. The prices charged CELLEXIS by BANM do not include any amounts resulting from taxes, fees, or exactions imposed by or from any municipal corporation or other political subdivision or agency of government relating to the provision of CRS and

against BANM, its property or its operations, excepting only taxes imposed generally on corporations.

B. The amounts resulting from such taxes, fees, or exactions imposed against BANM, its property, or its operations relating to this Agreement, excepting only taxes imposed generally on corporations, shall be billed prorata based upon all Authorized Users.

10. OPERATOR ASSISTANCE

Operator assisted calls cannot be billed to the access number.

11. PROVISION OF THE CELLULAR RADIO TELEPHONE EQUIPMENT

A. BANM shall not be responsible for the installation, operation, quality of transmission or maintenance of any of CELLEXIS'S or Authorized User's Cellular Radio Telephone Equipment.

B. CELLEXIS or its Authorized User must provide and maintain all Cellular Radio Telephone Equipment and ensure that it is technically and operationally compatible with the Cellular System and in compliance with applicable Federal Communications Commission rules and regulations.

C. The operating characteristics of CELLEXIS'S or Authorized User's equipment shall be such as not to interfere with the service offered by BANM.

12. TELEPHONE NUMBERS

CELLEXIS has no property right in the telephone number (access number) associated with CELLEXIS'S Cellular Radio Telephone Equipment. BANM reserves the right to assign, designate or change such numbers when reasonably necessary in the conduct of its business.

13. DISCONNECTION OF SERVICE FOR CAUSE

The terms set forth herein are in addition to the terms set forth in Section 18 of the Trial Agreement.

A. If CELLEXIS's or its Authorized User's equipment is used with facilities provided by BANM in violation of any of the provisions of this Agreement, BANM may take such action as necessary for the protection of its facilities and its provision of service to others. CELLEXIS shall discontinue such use of the equipment or correct the violation immediately, upon notice from BANM and shall confirm in writing to BANM within 5 days that such use has ceased or that the violation has been corrected. Upon failure of CELLEXIS to discontinue such use or correct the violation and to give the required written

confirmation to BANM within the time stated, BANM may discontinue some or all of CRS at BANM's discretion.

B. CRS may be refused or discontinued without notice in the event the CRS is used in such a manner that will adversely affect BANM's service to others.

14. NON-DISCRIMINATION

CELLEXIS shall not unreasonably discriminate among its Authorized Users in allocating CRS capacity purchased.



## EXHIBIT 2

Bell Atlantic NYNEX Mobile, Inc.  
180 Washington Valley Road  
Bedminster, NJ 07921  
908 306-7392  
FAX 908 306-7329

Katherine S. Abrams  
Regional Counsel

October 11, 1996

Via Fax No. (602) 664-1057

Mr. Douglas Fougnes  
President and CEO  
Cellexis International, Inc.  
4615 South Ash Avenue  
Suite H-5  
Tempe, AZ 85282

Via Fax No. (202) 785-4280

Mr. Mark London  
London & Mead  
1225 19th Street NW  
Washington, DC 20036

Via Fax No. (602) 253-3255

I. Douglas Dunipace, Esq.  
Jennings, Strouss and Salmon P.L.C.  
One Renaissance Square  
Two North Central  
Phoenix, AZ 85004-2393

Re: Termination of Washington/Baltimore Trial

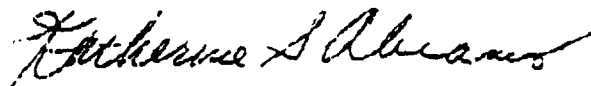
Dear Messrs. Fougnes and Dunipace:

Pursuant to the Agreement entered into between Cellexis International Inc. and Bell Atlantic NYNEX Mobile, please be advised that Bell Atlantic NYNEX Mobile intends to terminate the Washington/Baltimore trial on February 19, 1997. Please arrange to disconnect any facilities connected to the BANM switch on or before that date.

Please contact Kim Gordon in our Reseller Group at (908) 306-7756 to arrange to disconnect service to the numbers provided to you in connection with the trial. Cellexis shall remain responsible for payment of all charges up to and including the date of termination.

Thank you for your attention to this matter.

Very truly yours,



Katherine S. Abrams

cc: Ms. Kim Gordon  
Mr. Larry Rybar

*A Mobile Services Joint Venture*



## EXHIBIT 3



# CURRENTLY PROVIDED DIRECT CONNECT SERVICE

